

LISTS A-F OF ELEMENTS AND FEATURES

A. "...an inclined ramp module having an upper support surface which is inclined for substantially its full engagable riding length ...".

See claims 1 and 23.

B. "...said inclined ramp module and said straight ramp module being of substantially the same length."

See claims 1 and 23.

C. "...at least one T-shaped protrusion and at least one T-shaped channel groove both integrally formed at said end wall of said inclined ramp module end on said end wall of said straight ramp module ...".

See claims 12, 14, 17, 30, 40 and 43.

As noted in the prior Remarks, one of each T-shaped protrusion and T-shaped channel groove is located on each end surface. If only two of each were located on the end surfaces this would greatly restrict the different assemblies of ramps. Note that the inclined ramp module has only one end surface.

It should be noted that claim 33 broadly defines an interconnecting structure integrally formed on the modules.

D. "... contour of said upper support surface being substantially uniformly flat over its length including the area where said some of said ribs extend inwardly from the bottom of said inclined surface...".

See claims 4, 5, 6, 25, 31 and 34.

E. "...the width of said inclined ramp modules being no greater than the length of said straight ramp modules...".

See claims 18, 19, 23, 27, 38 and 39.

F. "...said inclined ramp module adapted to be connected to said side wall of said straight ramp module for end-to-side alignment...".

See claims 38 and 39.

It should be noted that some of the claims include more than one of the elements and features in the above list.

It should be noted that the Examiner cited no authority to support the rejection of claims 1-3 and 23 as anticipated under 35 U.S.C. 102(b). With regard to the rejection of the other claims under 35 U.S.C. 103(c), the Examiner relied upon *Howard v. Detroit Stove Works* (U.S. Supreme Ct.), *In re Hutchison* (CCPA) and *Ex parte Masham* (Board of Patent Appeals).

It is submitted that the relevant guidelines for determining anticipation under 35 U.S.C. 102 and obviousness under 35 U.S.C. 103 are clearly stated by the CAFC in *Metabolite Laboratories, Inc. v. Laboratory Corporation of America Holdings*, (03-1120) DECIDED: June 8, 2004. A copy of that decision is enclosed for the convenience of the Examiner.

The CAFC in reviewing the issue of anticipation under 35 U.S.C. 102 stated at page 21 the relevant guidelines for determining anticipation to be:

“A prior art reference anticipates a patent claim if the reference discloses, either expressly or inherently, all of the limitations of the claim.” EMI Group N. Am., Inc. v. Cypress Semiconductor Corp., 268 F.3d. 1342, 1350 (Fed. Cir. 2001) (citation omitted). At the outset, the Refsum article does not recite all of the claim 13 limitations. Thus, anticipation would have to rely on an inherent disclosure of undisclosed features, in this case, the “correlating” limitation.

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.

Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268 (Fed. Cir. 1991)."

The CAFC stated further at page 22:

"A prior art reference that discloses a genus still does not inherently disclose all species within that broad category. See *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1262 (Fed. Cir. 1989) ("Under [defendant's] theory, a claim to a genus would inherently disclose all species. We find [this] argument wholly meritless...")."

When the above guidelines are applied to independent claims 1 and 23, it can be readily seen that the Frederiksen reference does not anticipate these claims. In addition to defining a completely different, unique recreational ramp system for providing aerial lift for skaters, etc., both claims include the elements in list "A" above:

"... an inclined ramp module having an upper support surface which is inclined for substantially its full engageable riding length..."

In addition, both claims include the structure as noted in list "B." above:

"said inclined ramp module and said straight ramp module being of substantially the same length."

This structure provides inclined, riding surfaces to provide aerial lift to users of rideable wheeled recreational products at generally high speeds with minimal interruption. At the same time this also facilitates assembly of the modules in a stacked relationship in which a series of inclined modules can be connected in line with substantial angular continuity between inclined surfaces. See Figures 1, 3 and 3a. Ever the slight gap could be minimized by a lip 90.

As noted in the prior REMARKS, it is clear that Frederiksen's ramps 2 are not inclined substantially over the full engageable length. While dimensions were not found in the specification a rough measurement of the drawings shows that the flat portion at

the end of the top of the ramp 2 would extend for around 20% of the overall length of the upper surface. When stacked, as in Figs. 3 and 4, the lower end of the ramp 2 would extend partially over the flat portion. But this would still leave around 10% of the overall length being flat. In addition the inclined surfaces of the two ramps 2 when stacked would be offset from each other with a significant parallel angular gap. If a stacked arrangement were provided, this would result in two significant angular gaps. (See the Figure 4 and a Modified Figure 4 submitted with the prior REMARKS).

In this regard, the Frederiksen reference notes that the flat portion of the ramp element 2 is:

“slightly larger than the tile elements, so that the thin end projects slightly outside an underlying assembly joint so the joint is shielded.”

Thus, there will still be a considerable engagable, exposed length of the flat portion in the Frederiksen construction.

The guidelines for determining anticipation under 35 U.S.C. 102 do not support the rejection of independent claims 1 and 23. In addition, claim 23 has been amended to define: “the width of said end walls of said inclined ramp module being no greater than the length of its said straight ramp modules.” Thus, claim 23 further distinguishes over Frederiksen.

Also claim 3, dependent on claim 1, has been amended to define: “connecting means integrally formed on each of said end walls” to interengage to secure the ramp modules together.

Let us now consider the guidelines and test for determining obviousness under 35 U.S.C. 103. The CAFC in the *Metabolite* decision clearly stated the test for obviousness at pages 22 and 23.

“The test of obviousness in 35 U.S.C. 103 is the primary condition of patentability. Obviousness hinges on four factual findings: “(1) the scope and content of the prior art; (2) the differences between the prior art and the claims; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness.” Nat’l Steel Car, Ltd., v. Can. Pac. Ry., Ltd., 357 F.3d 1319, 1334 (Fed. Cir. 2004).”

The CAFC went on to state:

“Thus, the heavy burden of proof in the anticipation case also applies to obviousness. Hewlett-Packard, 909 F.2d at 1467. Next, the secondary references do not refer to total homocysteine, but rather to homocystine, one of the four components of total homocysteine. Thus, these secondary references do not add considerably to the Refsum disclosure. Finally, even if the secondary references disclosed total homocysteine, the record does not contain evidence showing that one of the skill in the art would have been motivated to combine the various references. Ecolochem, Inc. v. S. Cal. Edison Co., 227 F.3d 1361, 1372 (Fed. Cir. 2000) (“Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination.” (quoting ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577 (Fed. Cir. 1984))).

Numerous claims (12-14, 17-19, 27, 30, 31, 33, 38-41, 43 and 44) were rejected under 35 U.S.C. 103(a) as being obvious on Frederiksen alone. The Examiner here based the rejection on the 1893 Supreme Court decision in *Howard v. Detroit Stove Works*. There the Supreme Court found the patent invalid on the basis that to “cast in one piece an article which was formerly cast in two pieces” was not a patentable invention.

The Examiner relied upon that specific concept in the rejection of the claims including the structure for connecting two ramps end-to-end by integrally formed T-shaped protrusions and T-shaped grooves. As noted in the prior REMARKS, at least

one T-shaped groove and one T-shaped protrusion are integrally formed on each end of the modules. As noted, this connecting structure provides a desirable distribution of the connection between the ramps and also of the applied loads.

It cannot be seen how the T-shaped protrusion and groove are in anyway a one piece construction based upon the completely different connecting structure in Frederiksen. Even if somehow the coupling pieces 14 of Frederiksen were integrally formed with either of the “range element 2” or “tile element 4” this still would in no way teach or suggest the unique integrally formed connecting mechanism of the T-shaped protrusions and T-shaped grooves. In fact, it would appear that even if the coupling pieces 14 of Frederiksen were integrally formed alternately with the cut-outs 12 on the bottom of the ramp element 2 and tile element 4 the two elements 2 and 4 could not feasibly be connected together.

Clearly the Frederiksen reference is not relevant to the unique, integrally formed, T-shaped connecting structure. Thus, the rationale of the decision in *Howard v. Detroit Stove Works* does not apply or in any way support the rejection.

As noted in the prior REMARKS, the elements and features in the other lists “D-F” above also distinguish the noted claims over the combination of the other references Felzer and Seitz with Frederiksen. The numerous distinctions are discussed in the prior REMARKS.


With regard to the use of the term “substantially” in some of the claims, the Examiner has chosen to arbitrarily interpret that term very broadly. Yet as is clearly set forth in the noted legal authorities, the terms in a claim are essentially construed as defined in the specification and as shown in the drawings.

Thus, the overly broad interpretation of "substantially" as applied by the Examiner is not supported by the relevant legal authorities and certainly is not supported by Frederiksen.

In view of the Second Amendment to the claims and accompanying REMARKS and in further view of the preceding Supplemental Remarks To The Second Amendment, it is submitted that all of the claims patentably define over all of the references of record.

If the Examiner has any further questions about the allowability of any of the claims or any other matters, the Examiner is respectfully requested to call counsel for applicants prior to issuance of any further action in order to expedite further proceedings of this application.

Respectfully submitted,

By: 
Joseph R. Papp, Reg. No. 20115
HARNESSE, DICKEY & PIERCE, P.L.C.
Attorneys for Applicants

Dated: July 2, 2004

P.O. Box 828
Bloomfield Hills, Mi. 48303
248-641-1600

2124A-000021

JRP/cvjk